

NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c); Ariz. R. Crim. P. 31.24

FILED BY CLERK

SEP 27 2013

COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

THE STATE OF ARIZONA,)	2 CA-CR 2013-0308-PR
)	DEPARTMENT A
Respondent,)	
)	<u>MEMORANDUM DECISION</u>
v.)	Not for Publication
)	Rule 111, Rules of
ISAAC VICERA POPOCA,)	the Supreme Court
)	
Petitioner.)	
_____)	

PETITION FOR REVIEW FROM THE SUPERIOR COURT OF MARICOPA COUNTY

Cause No. CR2008006829001DT

Honorable Joseph C. Welty, Judge

REVIEW GRANTED; RELIEF DENIED

Isaac V. Popoca

San Luis
In Propria Persona

MILLER, Judge.

¶1 Petitioner Isaac Popoca seeks review of the trial court’s order denying his petition for post-conviction relief, filed pursuant to Rule 32, Ariz. R. Crim. P. “We will not disturb a trial court’s ruling on a petition for post-conviction relief absent a clear abuse of discretion.” *State v. Swoopes*, 216 Ariz. 390, ¶ 4, 166 P.3d 945, 948 (App. 2007). Popoca has not sustained his burden of establishing such abuse here.

¶2 After a jury trial, Popoca was convicted of two counts of third-degree burglary, one count of theft of property with a value of \$4,000 to \$25,000, one count of theft of property with a value of \$1,000 to \$2,000, and one count of attempted third-degree burglary. Sentenced as a repetitive offender, the trial court imposed aggravated, concurrent terms, the longest of which was twenty years. Popoca’s convictions and sentences were affirmed on appeal, although the credit for presentence incarceration was increased to 346 days. *State v. Popoca*, No. 1 CA-CR 09-0370 (memorandum decision filed June 10, 2010).

¶3 Popoca thereafter initiated a proceeding for post-conviction relief,¹ arguing in his petition that he had received ineffective assistance of trial and appellate counsel, the prosecutor had committed misconduct, his due process rights had been violated by pre-indictment delay, his rights against double jeopardy had been violated, his right to self-representation had been violated, and he had received “unconstitutional sentences.”

¹Popoca filed a notice of and petition for post-conviction relief during the pendency of his appeal. The trial court dismissed that proceeding “with leave to re-file at any time within 30 days following the issuance of the order and mandate on direct appeal.” The notice at issue here was timely filed after the issuance of the mandate.

The trial court summarily denied relief, and likewise denied Popoca's subsequent motion for reconsideration.

¶4 On review, Popoca repeats his arguments made below² and argues the trial court abused its discretion in dismissing his petition. We disagree. In a thorough, well-reasoned minute entry, the trial court identified all claims Popoca had raised and resolved them correctly and in a manner permitting this court to review and determine the propriety of that order. *See State v. Whipple*, 177 Ariz. 272, 274, 866 P.2d 1358, 1360 (App. 1993). The court correctly concluded that the claims raised either were not colorable or were precluded pursuant to Rule 32.2. No purpose would be served by repeating the court's ruling in its entirety, and we therefore adopt it. *See Whipple*, 177 Ariz. at 274, 866 P.2d at 1360.

¶5 Popoca specifically maintains the court abused its discretion in concluding his claims of prosecutorial misconduct and right to self-representation were precluded because they were addressed on appeal. He contends he is now raising "such claims from a different angle and with a set of different facts." Based on our comparison of the record on appeal and under Rule 32.1, we disagree. But, even assuming the claims now raised

²Popoca also argued in his petition for post-conviction relief that he had been excessively restrained at trial. He has abandoned that claim on review, and we therefore do not address it. Ariz. R. Crim. P. 32.9(c)(1) (petition for review shall contain "the reasons why the petition should be granted" and "specific references to the record"); *State v. Rodriguez*, 227 Ariz. 58, n.4, 251 P.3d 1045, 1048 n.4 (App. 2010) (declining to address argument not raised in petition for review); *see also State v. Bolton*, 182 Ariz. 290, 298, 896 P.2d 830, 838 (1995) ("Failure to argue a claim on appeal constitutes waiver of that claim.").

are different from those raised on appeal, the claims are precluded as waived because Popoca failed to raise them on appeal. *See* Ariz. R. Crim. P. 32.2(a)(3). Therefore, although we grant the petition for review, we deny relief.

/s/ Michael Miller

MICHAEL MILLER, Judge

CONCURRING:

/s/ Joseph W. Howard

JOSEPH W. HOWARD, Chief Judge

/s/ Garye L. Vásquez

GARYE L. VÁSQUEZ, Presiding Judge